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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION, as Executor of  
the Last Will and Testament of Elisha Cobb  
Mayo, deceased,  
Respondent.

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Transcript of the Record

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Upon Petition to Review a Decision of the United States  
Board of Tax Appeals

FILED

SEP 15 1942

PAUL P. O'BRIEN,



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

EDWARD HALE JULIEN.

For Comm'r.:

ARTHUR L. MURRAY, Esq.

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Docket No. 102469

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION as Execu-  
tor of the Last Will and Testament of Elisha  
Cobb Mayo, Dec'd.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES

1940

May 6—Petition received and filed. Taxpayer notified. (Fee paid).

May 7—Copy of petition served on General Counsel.

June 17—Answer filed by General Counsel.

June 17—Request for hearing in San Francisco, California, filed by General Counsel.

June 27—Notice issued placing proceeding on San Francisco, California, Calendar. Answer and request served.

1941

- Apr. 8—Hearing set June 16, 1941 in San Francisco, California.
- June 16—Hearing had before Mr. Kern on the merits. Submitted. Stipulation of facts filed. Briefs due July 31, 1941. Reply briefs due Aug. 30, 1941.
- July 2—Transcript of hearing 6/16/41 filed.
- July 26—Brief filed by taxpayer.
- July 31—Brief filed by General Counsel.
- July 31—Copy of brief served on General Counsel.
- Aug. 23—Reply brief filed by taxpayer. 3/25/41 copy served on General Counsel.
- Nov. 17—Memorandum findings of fact and opinion rendered, Kern, Div. 16. Decision will be entered under Rule 50. 11/18/41 copy served.
- Dec. 10—Computation of deficiency filed by General Counsel.
- Dec. 15—Hearing set Jan. 14, 1942 on settlement.
- Dec. 27—Consent to settlement filed by taxpayer.
- Dec. 30—Decision entered, Kern, Div. 16.

1942

- Mar. 14—Petition for review by United States Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by General Counsel.
- Mar. 25—Proof of service filed by General Counsel. (2) [1\*]

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\*Page numbering appearing at top of page of original certified Transcript of Record.



1942

Apr. 16—Certified copy of order from 9th Circuit, granting an extension to 6/22/42 to complete the record filed.

June 10—Certified copy of an order from the 9th Circuit extending the time to August 21, 1942 to transmit the record, filed.

July 28—Statement of points filed by General Counsel—with proof of service thereon.

July 28—Agreed designation of contents of record filed. [2]

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United States Board of Tax Appeals

Docket No. 102469

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION as Execu-  
tor of the Last Will and Testament of Elisha  
Cobb Mayo, Dec'd.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION

The above named petitioner hereby petitions for redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols: MT-ET-84-32-1st California) dated February 29, 1940, and as a basis of its proceeding alleges as follows:

1. The petitioner is a National Banking Association by law duly licensed to administer court and private trusts, and is the duly qualified and acting Executor of the Last Will and Testament of Elisha Cobb Mayo, deceased. That the said Estate is being administered at the Santa Rosa Branch of said Bank, in the City of Santa Rosa, County of Sonoma, State of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed the petitioner on February 29, 1940.

3. The taxes in controversy are estate taxes. The [3] deficiency asserted is \$5,971.61, all of which is in controversy.

4. The determination of taxes set forth in the said notice of deficiency is based upon the following errors:

(a) The inclusion in the gross estate of interest accrued on securities during the optional period contrary to the provisions of subdivision (j) of Section 302 of the Revenue Act of 1926, as amended by Section 202 of the Revenue Act of 1935 (now, Internal Revenue Code Section 811 (j)).

(b) Refusal of the respondent to allow as a deduction from the gross estate the amount of present values of all bequests contained in the Will of the decedent to certain organizations operated for charitable, religious, educational or other purposes as prescribed in Section 303 (a) (3) of the Revenue Act of 1926, as amended, (now, Internal Revenue Code, Section 811 (d)).

5. The facts upon which the petitioner relies

as the basis of this proceeding are as follows:

(a) Exhibit "A" and the Return Form 706 set forth the facts on the first assignment of error.

(b) Elisha Cobb Mayo died August 26, 1937 a resident of Santa Rosa, California. He left a Will, copy of which is hereto annexed and marked Exhibit "B". The Will provided for a devise to decedent's sister Rebecca S. Mayo of the family home at Number 20 Davis Street, Santa Rosa and a bequest of personal effects. The Davis Street home did not pass by the Will as a deed was executed to Rebecca S. Mayo dated November 17, 1919 but not recorded until September 2, 1937 which was after decedent's death. The value of this real property is included in the gross estate. The Will also provided for certain general cash [4] legacies which include California State Inheritance Taxes thereon, aggregating \$3,699.45. Paragraph Sixth of the Will leaves all the residuary estate to petitioner in trust with full powers of management, investment and reinvestment. The third paragraph of Paragraph Sixth reads as follows:

"From the said trust property my aforesaid trustee shall pay the sum of Two Hundred Fifty (\$250.00) dollars per month to my sister Rebecca S. Mayo, said payments to run from the date of my death, and in case she should, by reason of accident, illness, or other unusual circumstances so require, such additional sum or sums as in the judgment of said trustee may be necessary and reasonable under the existing conditions. Upon the death of my

said sister the said trustee shall liquidate my entire estate and from the proceeds shall pay to the beneficiary hereinafter named the amounts hereinafter mentioned, to-wit: ”

All the twelve beneficiaries which follow, (a) to (1) inclusive, are admitted charities, within the meaning of Section 303 (a) (3) of the Revenue Act, as amended.

Rebecca S. Mayo, decedent's sister, was born October 5, 1858, and her nearest birthday on the date of her brother, Elisha Cobb Mayo's death was 79 years. Rebecca S. Mayo has been totally blind for many years and prior to her brother's death. She rarely leaves her home at 20 Davis Street in Santa Rosa; has and does live a simple and frugal life. Her health is fair for one of her years and all her expenses, living or medical, have, for the years immediately after her brother's death, not exceeded \$100.00 a month. Prior to and on the date of the death of decedent, Rebecca S. Mayo's expenses were even less than \$100.00 per month. Apart from the home at 20 Davis Street which she owns outright and free of mortgage or other encumbrance, Rebecca S. Mayo has an independent annual income which amounted to approxi- [5] mately \$800.00 for the calendar year 1939 and is so shown upon her Federal Income Tax Return. She maintains three savings bank accounts in Santa Rosa and in the petitioner's branch, her savings account, which was opened October 6, 1938, has a present balance, March 5, 1940, of \$3,702.78. There have been no withdrawals from said account and almost without ex-

ception there are monthly deposits of the \$250.00 received from the Trustee under the terms of her brother, Elisha C. Mayo's Will.

The annual income from the trust of the residuary estate of Elisha C. Mayo has exceeded \$5,000.00 for each of the years following his death. All payments to Rebecca S. Mayo under the trust or executorship have been paid from income and the accounts settled by the Superior Court so show. No payments have been, nor are contemplated being made from the corpus of the trust as provided in decedent's Will: ". . . in case she (Rebecca S. Mayo) should, by reason of accident, illness or other unusual circumstances so require, . . ." Indeed, no unusual payment has been made from surplus income, which under the terms of the Will is first called, except \$58.83 in December 1938 in purchase of a Talking Book Machine produced by the American Foundation for the Blind, Inc.

Petitioner's Return Form 706, computed the value of the remainder interest to admitted exempt organizations to be \$93,776.70. This figure resulted after first deducting from the gross estate: Administration expenses \$5,323.22; Specific Bequests (cash legacies) \$3,699.45; Value of Rebecca S. Mayo's annuity \$11,811.53, computed according to the applicable Regu- [6] lations; and California State Inheritance Taxes \$4,000.00. The respondent did not except to this computation by petitioner, but disallowed the entire amount. No tax will result in this proceeding, even taking the respondent's figures, as set forth in Exhibit "A",

unless the redetermination of this Board finds the deduction for charitable vested remainder interests to be less than \$74,081.63. Said latter figure likewise excludes the value of Rebecca S. Mayo's annuity as computed above.

6. Wherefore, the petitioner prays that this Board may hear the proceedings and determine that there is no deficiency due from petitioner for Federal Estate taxes, in the Estate of Elisha Cobb Mayo, deceased.

EDWARD HALE JULIEN

Counsel for Petitioner

(Duly Verified.) [7]

EXHIBIT "A"

Treasury Department  
Internal Revenue Service  
San Francisco, Calif.

Feb. 29, 1940.

Office of  
Internal Revenue Agent in Charge  
433 Federal Office Bldg.  
San Francisco Division

MT-ET-84-32-1st California  
Estate of Elisha Cobb Mayo

Bank of America, N.T. & S.A., Executor  
Santa Rosa, California

Gentlemen:

You are advised that the determination of the estate tax liability of the above-named estate, dis-

closes a deficiency of \$5,971.61, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United State Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to Internal Revenue Agent in Charge, 433 Federal Office Building, San Francisco, California for the attention of Chief Estate Tax Officer. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By N. M. HARLESS

Internal Revenue Agent in  
Charge

JR;emr

Enclosures:

Statement

Form of Waiver [8]

## STATEMENT

In making this determination of the estate tax liability of the above-named estate, careful consideration has been given to your protest dated October 26, 1939 and to the statements made at the conference held January 17, 1940.

The deficiency results from the following adjustments:

## GROSS ESTATE

Stocks and Bonds	Returned	Determined
Item 3 .....	5,520.00	5,700.00
Item 12 .....	45.00	90.00
Item 19 .....	140.00	147.60
Item 20 .....	12,425.00	12,780.00

The adjustments with respect to the above items are based on the mean between the high and low sales prices on the New York and San Francisco Stock Exchanges.

## Mortgages, Notes and Cash

Item 1 .....	149.32	185.30
Item 2 .....	30.00	72.71
Item 3 .....	29.80	61.10

The above adjustments are due to interest accrued during the optional period.

## DEDUCTIONS

Miscellaneous Administration Expenses	Returned	Determined
Item 1 .....	250.00	153.64

The amount actually spent is allowed.

## Charitable, Public and Similar Gifts and Bequests

Item 1 .....	93,776.70	0.00
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The bequests to charity are disallowed as deduc-



tions because it appears from the decedent's will that the trustee was given the power thereunder to divert the trust funds to non-charitable purposes. See Article 47, Regulations 80.

In view of the foregoing, the Federal estate tax liability of this estate is finally determined as follows: [9]

	Determined	
Gross estate .....	\$119,308.49	
Deductions (1926 Act).....	105,226.86	
	<hr/>	
Net estate (1926 Act).....	14,081.63	
Gross estate .....	119,308.49	
Deductions (1932 Act).....	45,226.86	
	<hr/>	
Net estate (1932 Act).....	74,081.63	
Gross tax (1926 Act).....	140.82	
Credit for gift tax.....	0.00	
	<hr/>	
Gross tax less gift tax credit.....	140.82	
Credit for estate or inheritance tax	0.00	
	<hr/>	
Net tax (1926 Act).....		140.82
Total gross taxes (1926 and 1932 Acts) .....	5,971.43	
Gross tax (1926 Act).....	140.82	
	<hr/>	
Gross additional tax.....	5,380.61	
Credit for gift tax.....	0.00	
	<hr/>	
Net additional tax.....		5,380.61
		<hr/>
Total net tax .....		5,971.43
Amount shown on return.....		0.00
		<hr/>
Deficiency .....		5,971.61

The deficiency bears interest at the rate of six per cent per annum from fifteen months after decedent's death to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

Upon receipt of a waiver or upon the expiration of ninety days from the date of this letter if a petition is not filed with the Board of Tax Appeals, \$5,858.77 of the deficiency will be assessed. As the balance of the deficiency may be eliminated by credit for State or Territorial estate, inheritance, legacy or succession taxes, opportunity will be accorded for the submission of the evidence required by Article 9 of Estate Tax Regulations 80. If, after a reasonable time the evidence is not filed, the balance of the deficiency will be assessed. Please advise when the submission of the evidence may be expected.

For Exhibit "B" See Exhibit "A" To Stip. Facts - Page 36.

[Endorsed]: U.S.B.T.A. Filed May 6, 1940. [10]

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[Title of Board and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal

Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. (a) and (b) Denies that the determination of taxes set forth in the said notice of deficiency is based upon errors as alleged in paragraph 4 of the petition and subparagraphs thereunder. [11]

5. (a) Denies the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Admits that Elisha Cobb Mayo died August 26, 1937, a resident of Santa Rosa, California, and that he left a Will; for lack of information, and for other reasons, denies all other allegations contained in subparagraph (b) of paragraph 5 of the petition.

6. Denies generally and specifically each and every material allegations contained in the petition herein, not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and that the petitioner's appeal be denied.

(Signed) J. P. WENCHEL

T. M. M.

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

Alva C. Baird,

T. M. Mather,

Arthur L. Murray,

Special Attorneys,

Bureau of Internal Revenue.

ALM/vg 6-10-40

[Endorsed]: U.S.B.T.A. Filed Jun. 17, 1940. [12]

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Edward Hale Julien, Esq., for the petitioner.

Arthur L. Murray, Esq., for the respondent.

[Title of Board and Cause.]

## MEMORANDUM FINDINGS OF FACT AND OPINION

The Commissioner has determined a deficiency in Federal estate taxes in the amount of \$5,971.61 due from this petitioner. From the Commissioner's determination the taxpayer has appealed and instituted this proceeding.

The sole issue involved for our determination is whether bequests of certain specific remainder interests to charitable institutions under a testamentary trust are deductible in determining the net taxable estate of the settlor for estate tax purposes where decedent's sister has a prior [13] interest under the trust of \$250 per month for life and the trustee may pay to her such further sums as it

deems reasonable and necessary in the event of accident, illness or other unusual circumstances.

### FINDINGS OF FACT

The estate of Elisha Cobb Mayo, the Bank of America National Trust and Savings Association, Executor, is a decedent's estate with its address at Santa Rosa, California. It filed an estate tax return on behalf of the decedent's estate with the collector of internal revenue for the first division of California.

Elisha Cobb Mayo died testate on August 26, 1937. His will, subscribed to in Sonoma County, California, on April 3, 1937, contained, inter alia, the following provisions:

Second: I hereby declare that my only near of kin is my sister Rebecca S. Mayo and her welfare is uppermost in my mind, and I request my Trustee hereinafter named to give her every care, advice and assistance possible.

\* \* \* \* \*

Fourth: I give, devise and bequeath to my sister Rebecca S. Mayo my house and lot \* \* \* together with all household goods and personal property in said home contained.

Then follow certain specific bequests totaling \$3,500 to various individuals and one for the perpetual care and upkeep of a cemetery plot, after which appears the provision about which this controversy centers.

Sixth: I hereby give, devise and bequeath all the rest, residue and remainder of my es-

tate of whatsoever kind or character and wheresoever situated, to the Bank of America National Trust and Savings Association, a National Banking Association, (Santa Rosa Branch), to be held in trust for the following uses and purposes in relation to the same.

\* \* \* \* \*

[14]

From the said trust property my aforesaid trustee shall pay the sum of Two Hundred Fifty (\$250.00) dollars per month to my sister Rebecca S. Mayo, said payments to run from the date of my death, and in case she should, by reason of accident, illness, or other unusual circumstances so require, such additional sum or sums as in the judgment of said trustee may be necessary and reasonable under the existing conditions.

Upon the death of my said sister the said trustee shall liquidate my entire estate and from the proceeds shall pay to the beneficiary hereinafter named the amounts hereinafter mentioned, to-wit:

Here are specified bequests of \$2,000 to each of the following (a) Millers River Hospital, (b) Sonoma County Tuberculosis Association, (c) Children's Home Society of 3595 66th Avenue, Oakland, California, (e) Sonoma County Social Service Department; also, bequests of \$1,000 to each of the following: (d) the Blind Department of the California State Library at Sacramento, California, to be used for the purchase of books for the

blind, (f) the Santa Rosa Chapter of the American National Red Cross Society, and (g) the Santa Rosa Salvation Army. In addition there are provided specific bequests of \$500 to each of the following: (h) the Santa Rosa Humane Society, (i) the Santa Rosa District of the Boy Scouts of America, and (j) the Santa Rosa Camp Fire Girls. An additional bequest of \$20,000 is provided for the County of Sonoma to be used for the furnishing of rooms and accommodations at the Sonoma County Hospital for worthy and deserving indigent persons. It is provided that the residue of the trust estate is to go to the American National Red Cross Society.

The value of the gross estate of Elisha Cobb Mayo, deceased, com- [15] puted in accordance with the provisions of section 302 (j) of the Revenue Act of 1926, as amended by section 202 of the Revenue Act of 1935, was \$114,853.37.

The undisputed deductions from gross estate, allowable under the applicable internal revenue Acts, exclusive of specific exemption, amount to \$5,226.85.

On the Federal estate tax return filed for the Estate of Elisha Cobb Mayo, deceased, a deduction of \$93,776.70 was claimed under the heading of "Charitable, public and similar gifts and bequests," which deduction was totally disallowed by the respondent.

It is agreed between the parties that all the organizations listed in paragraph Sixth of decedent's

will are of a charitable or public nature within the scope of the Federal internal revenue laws. It is also agreed between the parties that none of the bequests to these organizations (except as to the \$1,000 to the California State Library, the \$2,000 to the Sonoma County Social Service Department and the \$20,000 to the County of Sonoma for rooms and accommodations for worthy poor persons), is of the type contemplated by section 42 of the California Probate Code as it was worded at the time of decedent's death.

The last will and testament of the decedent was admitted to probate on September 10, 1937, by the Superior Court of California, in and for the County of Sonoma. On February 3, 1938, Rebecca S. Mayo, sister of the decedent, and his only heir at law, executed a waiver with respect to the rights provided for and granted to her, in, by or under section 41 of [16] the California Probate Code. On April 15, 1938, the court made a decree of settlement of the first account and report and order of partial distribution. This decree has never been contested. On October 7, 1938, the court entered a decree settling the final account and for distribution, which decree has never been contested.

Rebecca S. Mayo, decedent's sister, was in her seventy-ninth year at the time of decedent's death. Her eyesight was then greatly impaired. In October 1935 an operation was performed on both her eyes for glaucoma, and in May 1936 an operation was performed on her right eye for a cataract. An



examination of her eyes made in August 1938 showed "Left eye—Hand motion three inches. Right eye approximately eighteen per cent vision."

At the time of decedent's death Rebecca S. Mayo owned the following property: (1) the home in which she lived, valued at \$3,500; (2) stocks and bonds valued at approximately \$16,000; and (3) savings bank accounts with deposits totaling \$7,465.13. The income from these assets during 1937 was approximately \$900. Her living expenses during 1937 for housekeeper, taxes, food, clothing and miscellaneous purposes were approximately \$1,450.

The foregoing facts have all been stipulated by the parties and, in addition to those facts, the Board has made the following findings from evidence introduced at the hearing.

Since decedent's death the monthly payments of \$250 to Rebecca Mayo have at all times been paid out of income of the trust corpus. The gross [17] income from the trust corpus (composed of stocks, bonds and a small amount of cash), for the year 1937 was \$6,338.32 and, after deducting the difference between gains and losses on security sales, there was a net income of \$4,814.67. The net income of the trust corpus in 1938 was \$5,298.79 after deduction of state and Federal income taxes and losses on securities sold. In 1939 the net income was \$3,995.77 after deduction of income taxes, administration expenses and losses on securities sold. In 1940 the net income was \$4,872.51, after the usual deductions.

The accounts which the trustee filed annually with the court distinguished income and principal and always indicated Rebecca Mayo's \$3,000 annual allowance as a charge against the income account.

Rebecca Mayo deposited in her savings account for accumulation the greater part of the \$250 monthly payments made to her from the trust. Her activities at the time of her brother's death and thereafter were greatly restricted due to the condition of her eyesight and her advanced age.

### OPINION

Kern:

Since the briefs were filed by the parties in this case, the Board has decided the case of Estate of Ozro Miller Field, 45 B.T.A. — (promulgated October 7, 1941), where, on somewhat comparable facts, a decision was rendered in favor of the taxpayer. If there is any material difference between the ultimate material facts in that case and the present proceedings it would seem to be in the present petitioner's favor. Our decision in the cited case is controlling here.

Respondent has urged that the present case is comparable to *Gammons et al v Hasset*, 121 Fed. (2d) 229, where the Circuit Court of Appeals, [18] First Circuit, disallowed a deduction for charitable gifts. Although this case was not specifically mentioned in our decision in the Field case, *supra*, certain language in our decision of that case disposes of respondent's contention. We said at page

—: “Cases where the beneficiary was not restricted in any way and cases where annuities for after-born children might consume the corpus are not in point.”

In the instant case, as in the Field case, *supra*, it was the trustee not the beneficiary, who had the right under certain circumstances, to invade the corpus to provide more income for the life beneficiary. In the instant proceedings the trustee is strictly limited to a situation where “by reason of accident, illness, or other unusual circumstances” the life beneficiary should “require” sums in addition to the payment of \$250 per month. The income from the trust corpus could reasonably be expected to provide sufficient cash for the \$250 monthly payments to decedent’s sister. During the years of the trust’s existence the income thereof has been considerably in excess of the amounts necessary to make these payments. And, since decedent’s sister has to date saved the greater part of her annuity payments, it seems highly improbable that “accident, illness or other unusual circumstances” would necessitate the trustee delving into corpus or even surplus income.

Respondent, in this connection, however, contends that only a portion of the charitable bequests should, in any event, be deductible, that is, [19] not to exceed one-third of the net estate plus the value of the bequests to the California State Library and the Sonoma County Social Service Department. This argument is not based upon

the nature of the bequests but upon the premise that the testator was precluded by certain California statutes from making devises to the other charities or in trust for those other charities in an amount which would call for the payment for that purpose of more than one-third of his net estate, citing sections 41 and 42 of the California Probate Code.<sup>1</sup> Respondent, however, does not

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<sup>1</sup>Section 41. Restriction on Devises for Charitable Uses. No estate, real or personal, may be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, unless done by will duly executed at least thirty days before the death of the testator. If so made at least 30 days before death, such devises and legacies shall be valid, but they may not collectively exceed one-third of the estate of a testator who leaves legal heirs, and if they do, a pro rata deduction from such devises and legacies shall be made so as to reduce the aggregate thereof to one-third of the estate. All dispositions of property made contrary hereto shall be void, and go to the residuary legatees or devisees or heirs, according to law.

Section 42. Exemption of certain donees from restrictions. Bequests and devises to or for the use of or benefit of the State, or any municipality, county or political subdivision within the State, or any institution belonging to the State, or belonging to any municipality, county or political subdivision within the State, or to any educational institution which is exempt from taxation under section 1a of Article XIII or section 10 of Article IX of the constitution of this State and statutes enacted thereunder, or for the use or benefit of any such educational institution, or to any corporation organized under the provisions of section 606 of the Civil Code or made by a testator leaving no spouse,

urge that provisions in a testamentary trust, which seek to distribute more than one-third [20] of the estate to charities are void. He argues that they are voidable, and contends that those portions which are voidable due to the terms of section 41 of the California Probate Code, *supra*, do not constitute allowable deductions. Petitioner admits that certain of the provisions may have been voidable but contends that they were not void. Inasmuch, therefore, as both parties agree that they were voidable, we will conduct no search into the question of whether, under the decisions of the California courts, they may have been void.

Respondent's reliance on our decision in *Estate of Valentine Janson*, 3 B.T.A. 296, is futile since that case dealt with a statute which, at the hearing, was admitted by counsel for the taxpayer to have been interpreted by the State courts as declaring void (not voidable) the charitable bequests there involved. A better analogy of our present situation was considered in *Commissioner of Internal Revenue v. First National Bank of Atlanta et al*, 102 Fed (2d) 129, wherein the Circuit Court of Appeals, Fifth Circuit, upheld the Board's decision set forth in 36 B.T.A. 491. In the latter case a resident of Georgia died leaving a will executed

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brother, sister, nephew, niece, descendant or ancestor surviving by whom the property so bequeathed or devised would have been taken if said property had not been so bequeathed or devised, are excepted from the restrictions of this Article.

89 days before his death in which he provided for certain charitable bequests. By instrument dated a week after his death his widow and only surviving child renounced all rights they might have under the Georgia statutes to contest these bequests. There was at the time in effect a Georgia statute [21] declaring that where a testator left surviving him a wife or child he could not devise any of his estate to charities unless the will was executed at least 90 days prior to his death, "or such devise shall be void."

Where persons are entitled by a State statute to assert claims in avoidance of certain provisions of a will, but fail and refuse so to do, the statute can not subsequent to the state court's decree be invoked by third persons, (here the Commissioner of Internal Revenue), for the purpose of avoiding the provisions already decreed by the state court to be valid and operative.

If read according to its terms, the bequests are definite, certain, unequivocal and final from the standpoint of the testator's desire and will, and unobjected to, they stand as valid as against those having right to contest or object to them, they stand also as valid and definite for the purposes of taxation. \* \* \*

We are in agreement with these views. \* \* \*  
[Commissioner of Internal Revenue v. First National Bank of Atlanta et al, 102 Fed. (2d) 129.]

Since these charitable bequests were not chal-

lenged by petitioner's sister, and have been held valid by a court of competent jurisdiction, we hold that they are deductible from decedent's gross estate.

Enter:

Decision will be entered under Rule 50.

Entered Nov. 17, 1941. [22]

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United States Board of Tax Appeals  
Washington

Docket No. 102469

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION, as Execu-  
tor of the Last Will and Testament of Elisha  
Cobb Mayo, deceased,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the memorandum findings of fact and opinion of the Board entered November 17, 1941, the respondent herein on December 10, 1941 having filed a recomputation of tax and the petitioner on December 27, 1941 having filed an agreement to such recomputation, now, therefore, it is  
Ordered and Decided: That there is no defi-

ciency in estate tax due from, or overpayment due to, this petitioner.

(Signed) JOHN W. KERN,  
Member.

Enter:

Entered Dec. 30, 1941. [23]

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[Title of Circuit Court of Appeals and Cause.]

### PETITION FOR REVIEW

Guy T. Helvering, United States Commissioner of Internal Revenue, holding office by virtue of the laws of the United States, hereby petitions the United States Circuit Court of Appeals for the Ninth Circuit to review the decision entered by the United States Board of Tax Appeals on December 30, 1941 that there is no deficiency in estate tax due from the Estate of Elisha Cobb Mayo, deceased (date of death August 26, 1937). This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The Bank of America National Trust and Savings Association at Santa Rosa, California, is the duly appointed, qualified and acting executor of the will of the decedent. The Estate Tax Return made on behalf of the decedent's estate, was filed with the Collector of Internal Revenue for the First District of California, whose office is located at San Francisco, California, which is within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit. [24]



## NATURE OF CONTROVERSY

The decedent, under the provisions of his will, placed his residuary estate in trust. The income from the corpus to the extent of \$250.00 a month, was directed to be paid to the decedent's sister for life, with remainder to charitable organizations. The trustee of the trust estate was authorized to invade the principal of the trust for the benefit of the decedent's sister in the event of accident, illness or other unusual circumstances so required.

In the Estate Tax Return made on behalf of the decedent's estate, the executor claimed a deduction from the gross estate in the amount of the value of the remainder interest in the corpus of the trust as a bequest to charitable organizations. In determining the deficiency in the estate tax, the Commissioner disallowed the claimed deduction because the right to invade the trust corpus made it impossible to determine the amount of the value of the trust corpus, if any, that would eventually pass to charity.

The Memorandum Findings of Fact and Opinion of the Board of Tax Appeals was entered November 17, 1941, in which the Board erroneously held that the estate was entitled to the claimed deduction above referred to; and the final order of redetermination of the deficiency was entered December 30, 1941 in which the Board erroneously ordered that there was no deficiency in the estate tax.

## ASSIGNMENTS OF ERROR

The Commissioner of Internal Revenue, being aggrieved by the conclusions of law contained in the decision of the Board of Tax Appeals and [25] by its order of redetermination of the deficiency in estate tax, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit.

The Commissioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in holding and deciding that the estate is entitled to a deduction from the decedent's gross estate of the amount of the value of the remainder interest in the residuary trust estate created under the decedent's will, as a bequest to charitable organizations.

2. The Board of Tax Appeals erred in not holding and deciding that the estate is not entitled to a deduction from the decedent's gross estate of the amount of the value of the remainder interest in the residuary trust estate created under the decedent's will, as a bequest to charitable organizations.

3. The Board of Tax Appeals erred in entering its order of redetermination that there is no deficiency in estate tax due from or overpayment due to the petitioner.

4. The Board of Tax Appeals erred in failing and refusing to enter its order of redetermination that there is a deficiency in estate tax due from

the estate of the decedent in the amount asserted by the Commissioner.

(Sgd.) SAMUEL O. CLARK, JR.,  
Assistant Attorney General.

(Sgd.) J. P. WENCHEL,  
R.L.W.  
Chief Counsel, Bureau of Internal Revenue,  
Attorneys for Petitioner on Review.

RFS-spt 3-14-42

[Endorsed]: U.S.B.T.A. Filed Mar. 14, 1942. [26]

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[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW

To: Bank of America National Trust and Savings Association, Executor, of the Last Will and Testament of Elisha Cobb Mayo, dec'd., Santa Rosa, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 14th day of March, 1942, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 14th day of March, 1942.

(Signed) J. P. WENCHEL,  
R.L.W.

Chief Counsel, Bureau of In-  
ternal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 19th day of March, 1942.

(Signed) JAS. T. MEILIKE

Respondent on Review,  
Trust Officer, Bank of  
America N. T. & S. A.

Spt 3-14-42

[Endorsed]: U.S.B.T.A. Filed Mar. 25, 1942. [27]

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[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW

To: Edward Hale Julien, Esq., Mills Building,  
San Francisco, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 14th day of March, 1942, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the

assignments of error as filed is hereto attached and served upon you.

Dated this 14th day of March, 1942.

(Signed) J. P. WENCHEL

R.L.W.

Chief Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 20th day of March, 1942.

(Signed) EDWARD HALE JULIEN

Attorney for Respondent on Review.

Spt 3-4-42

[Endorsed]: U.S.B.T.A. Filed Mar. 25, 1942. [28]

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[Title of Circuit Court of Appeals and Cause.]

### STATEMENT OF POINTS

Now Comes Guy T. Helvering, Commissioner of Internal Revenue, the petitioner on review herein, by and through his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and hereby asserts the following errors on which he intends to rely:

1. The Board of Tax Appeals erred in holding and deciding that the estate is entitled to a deduction from the decedent's gross estate of the amount of the value of the remainder interest in the residu-

ary trust estate created under the decedent's will, as a bequest to charitable organizations.

2. The Board of Tax Appeals erred in not holding and deciding that the estate is not entitled to a deduction from the decedent's gross estate of the amount of the value of the remainder interest in the residuary trust estate created under the decedent's will, as a bequest to charitable organizations.

3. The Board of Tax Appeals erred in entering its order of redetermination that there is no deficiency in estate tax due from or overpayment [29] due to the petitioner.

4. The Board of Tax Appeals erred in failing and refusing to enter its order of redetermination that there is a deficiency in estate tax due from the estate of the decedent in the amount asserted by the Commissioner.

(Signed) SAMUEL O. CLARK, JR.

Assistant Attorney General.

(Signed) J. P. WENCHEL

R. L. W.

Chief Counsel, Bureau of Internal Revenue.

Service of a copy of the within Statement of Points is hereby admitted this 20th day of July, 1942.

EDWARD HALE JULIEN,

Mills Building,

San Francisco, California,

Attorney for Respondent on Review.

Spt 7-13-42

[Endorsed]: U.S.B.T.A. Filed July 28, 1942. [30]

United States Board of Tax Appeals

Docket No. 102469

BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION, as Executor of  
the Last Will and Testament of Elisha Cobb  
Mayo, Deceased,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the facts as hereinafter stated shall be taken as true and that either party may prove such additional facts as may be relevant and material and not inconsistent with those hereby stipulated.

I. Estate of Elisha Cobb Mayo, The Bank of America National Trust and Savings Association, Executor, is a decedent's estate with its address at Santa Rosa, California.

II. Elisha Cobb Mayo died testate on August 26, 1937. A full true and correct copy of the last will and testament of Elisha Cobb Mayo, deceased, is attached hereto and made a part hereof and marked Exhibit "A". [31]

III. The value of the gross estate of Elisha Cobb Mayo, deceased, computed in accordance with the provisions of subdivision (j) of section 302 of the Revenue Act of 1926, as amended by section 202 of the Revenue Act of 1935, was \$114,853.37.

IV. The undisputed deductions from gross estate, allowable under the applicable Internal Revenue Acts, exclusive of specific exemption, amount to \$5,226.85.

V. On the Federal estate tax return filed for the Estate of Elisha Cobb Mayo, deceased, a true and correct copy of which will be introduced into evidence, a deduction of \$93,776.70 was claimed under the heading of "Charitable, Public, and Similar Gifts and Bequests", which deduction was totally disallowed by the respondent, as shown by the deficiency notice, a correct copy of which is attached to the petition.

VI. It is agreed that all the organizations listed as Items (a) to (1), inclusive, of paragraph Sixth of decedent's will, are of a charitable or public nature, within the meaning of the applicable Federal internal revenue laws. It is agreed that Items (a), (b), (c), (f), (g), (h), (i), (j) and (l), of paragraph Sixth of decedent's will, do not involve bequests of the type contemplated by section 42 of the California Probate Code as it was worded at the time of decedent's death.

VII. The last will and testament of Elisha Cobb Mayo was admitted to probate on September 10, 1937, by the Superior Court of California, in and for the County of Sonoma. On February 3, 1938, Rebecca S. Mayo, sister of the decedent and his only heir-at-law, [32] executed a waiver with respect to the rights provided for and granted to her, in, by or under Section 41 of the California Probate Code, a copy of which waiver is attached hereto and made a part hereof and marked Exhibit "B".



VIII. On April 15, 1938, the said Court made a Decree of Settlement of First Account and Report and Order of Partial Distribution, a correct copy of which is attached hereto and made a part hereof and marked Exhibit "C". Said decree has never been contested.

IX. On October 7, 1938, the said Court entered a Decree Settling Second and Final Account and For Distribution, a correct copy of which is attached hereto and made a part hereof and marked Exhibit "D". The said decree has never been contested.

X. Rebecca S. Mayo, sister of the decedent, was born on October 5, 1858, and her nearest birthday at the time of decedent's death was her seventy-ninth.

XI. At the time of decedent's death the eyesight of his sister, Rebecca S. Mayo, was greatly impaired. During October, 1935, an operation was performed on both her eyes for glaucoma. During May, 1936, a second operation was performed on her right eye for cataract. An examination of her eyes made during August of 1938 showed "Left eye—Hand motion 3 inches." "Right eye approximately 18 per cent vision."

XII. At the time of decedent's death his sister, Rebecca S. Mayo, owned the following property, (1) the home in which she lived, valued at \$3500.00; (2) stocks and bonds, valued at approximately \$16,000.00; and (3) savings bank accounts with deposits of \$7465.13. [33] The income from said stocks,

bonds and savings accounts, during 1937, was approximately \$900.00. Rebecca S. Mayo's living expenses during 1937 for housekeeper, taxes, food, clothing and miscellaneous were approximately \$1450.00.

EDWARD HALE JULIEN

Counsel for Petitioner.

J. P. WENCHEL

Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent. [34]

EXHIBIT "A"

Last Will and Testament of Elisha C. Mayo

I, Elisha C. Mayo, of the City of Santa Rosa, County of Sonoma, State of California, being of sound and disposing mind and memory and not acting under duress, menace, fraud, or the undue influence of any person whomsoever, do make, publish, and declare this to be my last Will and Testament in manner following, that is to say:

First: I hereby direct my executor hereinafter named to pay all my just debts and funeral expenses as soon after my death as can be lawfully and conveniently done.

Second: I hereby declare that my only near of kin is my sister Rebecca S. Mayo and her welfare is uppermost in my mind, and I request my Trustee hereinafter named to give her every care, advice and assistance possible.

Third: I hereby further declare that there may be living descendants of my father's brothers and sisters and of cousins of my mother, but I know

little of them, do not know how many of them there are, and have never seen the most of them, and I therefore make no bequests or provisions for them, but in the event that any such relative should establish his right to share in my estate, I do hereby bequeath to such relative or relatives the sum of ONE (\$1.00) Dollar each, and no more.

Fourth: I give, devise and bequeath to my sister, Rebecca S. Mayo my house and lot at number 20 Davis Street, in the City of Santa Rosa, State of California, together with all household goods and personal property in said home contained.

Fifth: I give and bequeath the following amounts to the beneficiaries hereinafter named, viz:

(a) The sum of \$500.00 to the Shilo Cemetery District, near Windsor, California, for the perpetual care and upkeep of Lot 46X.

(b) The sum of \$500.00 to Mrs. Eliza M. Robbins, of Windsor, California.

(c) The sum of \$500.00 to Mrs. Amy Hughes Gordon, of 622 Charles Street, Santa Rosa, California;

(d) The sum of \$500.00 to Mr. and Mrs. Oscar A. Smythe, or to the survivor of them, of 25 Davis Street, Santa Rosa, California. [35]

(e) The sum of \$500.00 to Mrs. C. C. Cragin, of 999 Sonoma Avenue, Santa Rosa, California;

(f) The sum of \$500.00 to Mrs. Edith Frutiger, of Route 2, Box 29, Petaluma, California.

(g) The sum of \$500.00 to Miss Lorae A. Jones, of Potter Valley, Mendocino County, California.

It is my desire that there be paid out of my es-

tate any inheritance tax which may be chargeable against the bequests given to the individuals hereinabove named, exclusive of Shilo Cemetery District, so that each of them may receive the full sum of \$500.00 free from any taxes or deductions, to be paid as soon after my death as possible.

Sixth: I hereby give, devise and bequeath all the rest, residue and remainder of my estate of whatsoever kind or character and wheresoever situated, to the Bank of America National Trust and Savings Association, a National Banking Institution, (Santa Rosa Branch), to be held in trust for the following uses and purposes in relation to the same.

Said Trustee is hereby vested with full power and authority in its discretion to retain said property in the same form as it is received by it and is authorized to hold, mortgage, invest and reinvest the trust property in such manner and in such character of property as it may deem advisable; to borrow money for the benefit of the trust, to sell or to encumber the trust property, or any part thereof, by pledge, mortgage, Deed of Trust, or otherwise, and to improve, repair or exchange the trust property in such manner and upon such terms and conditions as the trustee may deem advisable. The trustee may participate in reorganization, consolidations, mergers, liquidations or foreclosures and shall pay out of the trust property, or gross income, all taxes, assessments, premiums, costs, charges, fees and expenses of every character incurred or expended in the care, collection, administration, protection, sale or distribution of the property, or in connection therewith. The powers of the trustee

herein conferred shall be cumulative and in addition to the powers conferred upon and granted to it by law.

From the said trust property my aforesaid trustee shall pay the sum of Two Hundred Fifty (\$250.00) dollars per month to my sister Rebecca S. Mayo, said payments to run from the date of my death, and in case she should, by reason of accident, illness, or other unusual circumstances so require, such additional sum or sums as in the judgment of said trustee may be necessary and reasonable under the existing conditions.

Upon the death of my said sister the said trustee shall liquidate my entire estate and from the proceeds shall pay to the beneficiary hereinafter named the amounts hereinafter mentioned, to-wit:

(a) The sum of \$2000.00 to Millers River Hospital at Winchendon, Worcester County, State of Massachusetts; [36]

(b) The sum of \$2000.00 to the Sonoma County Tuberculosis Association;

(c) The sum of \$2000.00 to Children's Home Society of 3595 66th Avenue, Oakland, California;

(d) The sum of \$1000.00 to the Blind Department of the California State Library at Sacramento, California, to be used for the purchase of books for the blind;

(e) The sum of \$2000.00 to the Sonoma County Social Service Department.

(f) The sum of \$1000.00 to the Santa Rosa Chapter of the American National Red Cross Society.

(g) The sum of \$1000.00 to the Santa Rosa Salvation Army.

(h) The sum of \$500.00 to the Santa Rosa Humane Society.

(i) The sum of \$500.00 to the Santa Rosa District of the Boy Scouts of America.

(j) The sum of \$500.00 to the Santa Rosa Camp Fire Girls.

(k) The sum of \$20,000.00 to the County of Sonoma to be used for the furnishing of rooms and accommodations at the Sonoma County Hospital for worthy and deserving indigent persons.

(l) All the rest, residue and remainder of my trust estate shall go to the American National Red Cross Society.

Seventh: I recommend to the executor of this will and the Trustee appointed hereunder, that it employ H. W. A. Weske, Attorney-at-Law, of the City of Santa Rosa, State of California, as its attorney in all matters requiring legal assistance hereunder.

Lastly: I hereby nominate and appoint Bank of America National Trust and Savings Association, a National Banking Association (Santa Rosa Branch), the executor of this my last Will and Testament, and as trustee under this Will.

In Witness Whereof, I have hereunto set my hand this 3rd day of April, 1937, at the City of Santa Rosa, County of Sonoma, State of California.

ELISHA C. MAYO.

The foregoing instrument, consisting of four pages, besides this one, was, on the day it bears date,

by the said Elisha C. Mayo signed, published as, and declared to be his last will and testament, in the presence of us, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

H. W. A. WESKE

Residing at 721 Spring Street,  
Santa Rosa, Calif.

DORIS J. OLSEN

Residing at 238 Carillo Street,  
Santa Rosa, Calif.

[Endorsed]: U.S.B.T.A. Filed Jun. 16, 1941. [37]

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

B.T.A. Docket No. 102469

GUY T. HELVERING, Commissioner of Internal  
Revenue,

Petitioner on Review

v.

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION, As Execu-  
tor of the Last Will and Testament of Elisha  
Cobb Mayo, deceased,

Respondent on Review

DESIGNATION FOR RECORD

To the Clerk of the United States Board of Tax  
Appeals:

You will please prepare, transmit and deliver to

the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board;

2. Pleadings before the Board:

(a) Petition, including annexed copy of deficiency letter;

(b) Answer.

3. Memorandum findings of fact and opinion, and decision of the Board;

4. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review;

5. Stipulation of Facts, including Exhibit "A", but excluding Exhibits "B", "C" and "D".

6. Statement of Points to be relied upon by petitioner on review. [38]

7. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record. [Not included in record.]

8. This Designation for Record.

(Signed) J. P. WENCHEL

R. L. W.

Chief Counsel, Bureau of Internal Revenue.

Service of a copy of the within Designation for



Record is hereby admitted this 20th day of July, 1942.

Agreed to:

EDWARD HALE JULIEN  
Mills Building,  
San Francisco, California,  
Attorney for Respondent on  
Review.

Spt 7-13-42

[Endorsed]: U.S.B.T.A. Filed July 28, 1942. [39]

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United States Board of Tax Appeals  
Washington

Docket No. 102469

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

v.

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION, as Execu-  
tor of the Last Will and Testament of Elisha  
Cobb Mayo, Dec'd.,

Respondent.

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 39, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on

file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 29th day of July, 1942.

[Seal]

B. D. GAMBLE

Clerk,

United States Board of Tax Appeals.

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[Endorsed]: No. 10213. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Bank of America National Trust and Savings Association, as Executor of the Last Will and Testament of Elisha Cobb Mayo, deceased, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed August 3, 1942.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
For the Ninth Circuit.

C. C. A. 9th No. 10213

B. T. A. Docket No. 102469

GUY T. HELVERING, Commissioner of Internal  
Revenue,

Petitioner on Review,

v.

BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION, As Executor of  
the Last Will and Testament of Elisha Cobb  
Mayo, deceased,

Respondent on Review.

DESIGNATION OF PARTS OF RECORD FOR  
CONSIDERATION.

The petitioner, Guy T. Helvering, Commissioner  
of Internal Revenue, hereby designates the entire  
record, including the statement of points, for con-  
sideration upon appeal and review of this case.

SAMUEL O. CLARK, JR.,

Assistant Attorney General.

Copy served on Edward Hale Julien, Esq., Mills  
Building, San Francisco, California, Attorney for  
respondent on review.

[Endorsed]: Filed Aug. 17, 1942, Paul P.  
O'Brien, Clerk.

